IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 20636 of 2005
With
SPECIAL CIVIL APPLICATION No. 20646 of 2005
To
SPECIAL CIVIL APPLICATION No. 20654 of 2005
With
SPECIAL CIVIL APPLICATION No. 20657 of 2005
To
SPECIAL CIVIL APPLICATION No. 20667 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAHESHKUMAR VIRJIBHAI TRIVEDI & 20 - Petitioner(s)

Versus

THE STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR BP GUPTA for Petitioner(s) : 1 - 21.
GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 11/10/2005

COMMON ORAL JUDGMENT

1. Rule. Service of rule is waived by Shri Dipen Desai and Shri M.R.Mengade, learned AGPs on behalf of the respondents in this group of petitions.

2. As the common questions of law and facts arise in this group of petitions, they are being disposed of by this common judgment and order.

3. In this group of petitions, the respective petitioners have prayed for an appropriate writ, order and / or direction quashing and setting aside the order dated 17.1.2001 and subsequent action taken on the basis of the said order. It is also further prayed that to hold that the respondents have no authority to take possession of the lands allotted to the petitioners bearing Survey No.377 paiki of village Manjavas, Taluka-Rapar, District-Kachchh.

4. It is the contention on behalf of the petitioners that the petitioners are allotted lands admeasuring 10 Acres each by the Collector, Banaskantha at Palanpur from the land bearing Survey No.377 paiki pursuant to the orders passed by the

Deputy Collector, Anjar vide order No.REH./Land/ Allotment dated 13.7.1979 and 16.9.1978 for the purpose of cultivation pursuant to the rehabilitation scheme of the State Government. It is the contention on behalf of the petitioners that the aforesaid scheme is meant for Pakistani nationals who have crossed over to India during India-Pakistan war taken place in the year 1971 and the said allotment was pursuant to the Government Resolution / Scheme dated 4.12.1978, of which, a copy is produced at Annexure-A to the petition.

5. It appears from the record that the land in question is within the sanctuary known as Wild Ass Sanctuary and for which necessary notifications are already issued by the competent authority under Section-18, 20 and 21 of the Wild Life Protection Act, 1972. After giving an opportunity, the Additional Collector, Gudkhar Sanctuary (Survey and Settlement), Surendranagar passed the impugned order dated 17.1.2001 refusing to recognize the rights of the petitioners in the land in question as their rights were after notification under Section-18 of

the Wild Life Protection Act declaring the intention, means, after declaration of the sanctuary. It is required to be noted that the necessary entry with regard to the said order is already mutated in the revenue record on 16.5.2002. Thereafter, the respective petitioners have preferred the present Special Civil Applications under Article 226 of the Constitution of India for the aforesaid reliefs.

6. Shri B.P.Gupta, learned advocate appearing on behalf of the petitioners has submitted that as the petitioners are allotted the lands in question by the Deputy Collector, Anjar considering the scheme of the State Government dated 14.12.1978 which is rehabilitation scheme meant for Pakistani Nationals who crossed over to India during India-Pakistan War of 1971 and therefore, the respondents cannot evict the petitioners from the lands in question and / or cannot take possesion of the land in question from the petitioners and therefore, it is requested to grant relief as prayed for and allow the present Special Civil Applications.

7. Shri Dipen Desai, learned AGP as well as Mr.M.R.Mengade, learned AGPs while opposing the present Special Civil Applications have relied upon the provision of Section-18, 20, 26-A, 27, 29 and 34-A of the Wild Life Protection Act, 1972 and have submitted that as the petitioners were allotted the lands in question after declaration of sanctuary under Section-18 of the Act and in view of the fact that the necessary notification under Section-21 of Wild Life Protection Act is already published since long and the land in question is within the sanctuary known as Wild Ass Sanctuary, the petitioners cannot be continued in the land in question, otherwise, it will be an offence under the provisions of the Wild Life Protection Act, 1972. It is, therefore, submitted that if any relief is granted protecting possession of the petitioners in the land in question, the same will be contrary to the provisions of Wild Life Protection Act and if the petitioners are continued to be in possession of the land in question, the same will be an offence and therefore, under the circumstances, it is requested to dismiss the present Special Civil Applications.

8. At the outset, it is required to be noted that in the present Special Civil Applications, the respective petitioners have challenged the legality and validity of the order passed by the competent authority dated 17.1.2001 and the present Special Civil Applications are filed in September, 2005 i.e. almost after a period of four years, for which, there is no explanation whatsoever for filing the present Special Civil Applications belatedly. Under the circumstances, the present Special Civil Applications are as such required to be dismissed on the ground of delay and laches. Even otherwise, it is required to be noted that so far as the lands in question is concerned, it is Wild Ass Sanctuary declared under the provisions of the Wild Life Protection Act, 1972 and necessary notifications are already issued since long. It is also required to be noted that the intention for sanctuary was already declared in the year 1973 and as per provisions of Section-20 of the Wild Life Protection Act, 1972, after issue of notification under Section-18, no right shall be acquired in, on or over the land comprised within the

limits of area specified in such notification, except by succession, testamentary or intestate. Under the circumstances, when the lands in question are allotted to the petitioners after issuance of notification under Section-18 of the Act, their rights are rightly not accepted by the competent authority. It is also required to be noted that once the land in question is within the limits of sanctuary, as per Section-27 of the Act, no person other than persons specified under Section-27 shall enter, reside in sanctuary except under the permit granted in accordance with Section-28 and necessary permit can be granted by the Chief Wild Life Warden only for the limited purposes, such as, investigation, or study of wild life, photography, scientific research etc. It is also required to be noted that that for any of the above breach, offence can be registered against the person who commits breach of the same. Under the circumstances, prayer of the petitioners for declaration that the respondents have no authority to take possession of the land allotted to the petitioners from the land bearing Survey No.377 of village Manjavas, Taluka-

Rapar of District Kachchh, cannot be granted. On the contrary, considering the provisions of Wild Life Protection Act, the respondents are justified in their decision. Under the circumstances, there is no substance in the present Special Civil Applications and possession of the petitioners cannot be protected as the land in question is within the Wild Ass Gudkhar Sanctuary declared under the provisions of the Wild Life Protection Act, 1972. However, it will be open for the petitioners to move an appropriate authority for grant of any other land, in other words, the petitioners may appropach the Collector, Palanpur and / or any other competent authority with request for allotment of any other lands as per the Government Resolution dated 4.12.1978 and as and when such representation is made, the competent authority is directed to consider the same in accordance with law and in light of the scheme / Government Resolution dated 4.12.1978 as expeditiously as possible.

9. In view of above discussion and direction, the present Special Civil Application are dismissed.

10. Rule in each petition stands discharged, however, there will no order as to costs.

[M.R.Shah, J.]

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